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SENSITIVE
SIPDIS

EUR/WE FOR ALLEGRONE AND SAMSON
L/LEI FOR PROPP, KULISH AND JOHNSON

E.O. 12958: N/A
TAGS: [PREL](#) [PGOV](#) [MARR](#) [SP](#)
SUBJECT: SPAIN/COUSO CASE: NATIONAL COURT DISMISSES CHARGES
AGAINST THREE U.S. SERVICEMEN

REF: A. 2007 MADRID 1000
[1](#)B. 2007 MADRID 26

[1](#)1. (SBU) On May 13, Judge Javier Gomez Bermudez, President of the Criminal Division of the National Court, and Javier Zaragoza, Chief Prosecutor of the National Court, phoned Charge Llorens and informed him that earlier in the day the National Court handed down a decision dismissing the case against three U.S. servicemen charged with war crimes in the June 2003 death in Baghdad of Spanish television cameraman Jose Couso. Press reports appeared later in the day confirming the 3-1 ruling of the four-judge panel, and the Embassy was able to obtain a copy of the legal decision in Spanish (electronic copy forwarded to L). On May 14, the Charge spoke again with Judge Gomez Bermudez, who emphasized the Spanish judiciary's commitment to rule on this case based on the facts and the law and not on the prevailing "political and media winds." The Judge said the red notices and arrest warrants against the servicemen were no longer in force. He also clarified for the Charge that the court's ruling "provisionally" archiving the case (rather than giving it a "permanent" filing) is actually to our benefit because it precludes the case being appealed to the Spanish Supreme Court. The Charge also spoke with Chief Prosecutor Zaragoza, who reiterated that he never thought the Spanish judiciary had legal jurisdiction over this (very weak, in his words) case and was disappointed when the Supreme Court ruled otherwise in late 2006 (REFTEL B).

[1](#)2. (SBU) Our Embassy legal advisor has briefly reviewed the case and agrees with Judge Gomez Bermudez' conclusions that further appeals are not possible. She said that the ruling is described as a "preliminary dismissal" (sobreseimiento provisional). Such a ruling applies when one of the following situations occurs: 1) A judge rules that it has not been duly proven that an offense has been committed or 2) When a crime is judged to have been committed but there is no evidence to accuse a specific person. Under the Spanish Criminal Code, this type of dismissal has no further appeals. Although we will have a better understanding of the ramifications of the decision after more careful review, yesterday's ruling appears to be good news and hopefully is one of the final steps needed to bring this long saga to a close. The ruling states that the ultimate decision to dismiss the case must now come from the examining magistrate. According to the Embassy's legal advisor, unless the magistrate can find specific intent on the part of the servicemen to "terrorize" (a requirement of the Spanish

Criminal Code to judge a crime of war), he will have to close the case. The family of Jose Couso announced after the ruling that they still plan to press forward and will try to appeal to the Supreme Court. They also said they have unidentified "new witnesses" who will soon come forward to testify and hopefully reopen the case.

//COMMENT//

13. (SBU) The Couso family is understandably very emotionally attached to this case, and they are supported by a variety of left wing causes and organizations in Spain. It is not likely that yesterday's ruling, however legally devastating it may have been to their side, will convince them to give up. All indications from our contacts within the Spanish judiciary and Embassy's legal advisor suggest that this case can go no further; the indictments have been revoked and the arrest warrants invalidated. We will report further as warranted on Couso family efforts to try and keep this case open. It would also be useful to confirm that Interpol and Europol diffusions on the three individuals have been removed, allowing them once again to travel freely.
Llorens